

APR 29 2016

Clerk, U.S. District Court
District Of Montana
Helena

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

BUTTE DIVISION

KX ENERGY, INC., a Virginia
Corporation,

Plaintiff,

vs.

GREGORY PETER PANIS,
NUTRITION EXPENSE
CORPORATION, INC., a dissolved
Oregon corporation, NUTRITION
CLUBSTORES, INC., a dissolved
Oregon corporation, and JOHN DOES
1-99,

Defendants.

No. CV 15-25-BU-SEH

ORDER

On April 13, 2016, the Court entered judgment in this case in favor of Plaintiff, KX Energy, Inc., in the amount of \$127,609.00, with post-judgment interest and allowable costs of suit.¹ On April 27, 2016, Plaintiff filed its Motion for Award of Attorneys' Fees.²

The Montana Supreme Court has recognized an equitable exception to the American Rule regarding attorneys' fees stating, "an award of attorney's fees in the absence of a contract or statutory basis will be narrowly applied, and will be

¹ Doc. 32.

² Doc. 35.

limited to those cases in which the prevailing party has been forced to defend against a frivolous or malicious action.³

In this case, Defendant, Gregory Peter Panis, filed two motions. First, a motion to dismiss,⁴ and second, after default was entered,⁵ an Affirmation in Opposition for Default Fed.R.Civ.P. 55(a).⁶ Both were denied.⁷ On April 13, 2016, Plaintiff was awarded the judgment as requested.⁸

Plaintiff has not demonstrated that it was forced to defend against frivolous or malicious actions by Defendants. No recovery of attorneys' fees is warranted.

ORDERED:

Plaintiff's Motion for Award of Attorney's Fees⁹ is DENIED.

DATED this 29th day of April, 2016.


SAM E. HADDON
United States District Judge

³ *El Dorado Heights Homeowners' Ass'n v. Dewitt*, 186 P.3d 1249, 1255 (Mont. 2008) (citing *Pankratz Farms, Inc. v. Pankratz*, 95 P.3d 671, 687 (Mont. 2004)).

⁴ Doc. 14.

⁵ Doc. 18.

⁶ Doc. 22 (The Court construed the affirmation as a motion to set aside default, addressed it as such and denied it. (*See* Doc. 24)).

⁷ Docs. 16 and 24.

⁸ Doc. 32.

⁹ Doc. 35.